

REMARKS

Status of the Claims

After entry of the instant amendment, claims 1-3 and 6-10 are pending in the present application. Claims 1, 7 and 9 are independent.

Claim 5 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Claims 1 and 9 have been amended to recite elements previously recited in claim 5, and claim 6 has been amended to change its dependency in view of the cancellation of claim 5. Thus, no new matter has been introduced by way of amendment to the claims.

Reconsideration of this application, as amended, is respectfully requested.

Request for Entry of Response After Final Rejection

This response should be entered after final rejection because it is believed to automatically place the claims in condition for allowance.

In the event the Examiner disagrees and finds that this response does not place this application into condition for allowance, the Examiner is requested to enter this response because it places the application into better condition for appeal.

Drawings

Applicants thank the Examiner for indicating that the drawings are accepted.

Priority under 35 U.S.C. § 119

Applicants thank the Examiner for previously acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119. The Examiner previously indicated that certified copies of the priority documents had not been received.

The Examiner is respectfully requested to contact the International Bureau and request copies of the priority documents through the Digital Access Service (DAS) for priority documents.

Specification Objection

The Examiner objected to Applicants' amendment of page 1 of the specification in the Response filed September 2, 2010, because Applicants did not instruct for deletion of original paragraph [0001] at page 1, lines 5-7, of the specification in view of introduction of a new paragraph cross-referencing related applications.

Applicants have amended the specification as indicated above to delete the now redundant original paragraph [0001] at page 1, lines 5-7, of the specification. In view of the amendment of the specification, Applicants respectfully request that the objection be withdrawn.

Allowable Subject Matter

The Examiner indicated at page 4 of the Office Action that claims 5 and 6 are free of the prior art and would be allowable if rewritten in independent form. Applicants thank the Examiner for the indication of allowable subject matter in the present application.

Rejection under 35 U.S.C. § 103(a)

Claims 1-3 and 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al., U.S. Patent No. 7,314,971. This rejection is respectfully traversed.

Claims 1-3 and 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hanson et al., U.S. Patent No. 7,164,058 in view of Mariani et al., U.S. Patent No. 6,046,382 and further in view of Schöffl et al., "An SAR sequence containing 395 bp DNA fragment mediates enhanced, gene-dosage-correlated expression of a chimaeric heat shock gene in transgenic tobacco plants," Transgenic Res., 1993, Vol. 2, No. 2, pp. 93-100. This rejection is respectfully traversed.

As set forth above, the elements of objected-to claim 5 (*e.g.*, allowable if rewritten in independent form) have been added into independent claim 1 and therefore independent claim 1 should be in condition for allowance. Also, claims 2, 3, 6-8 and 10 depend, either directly or indirectly, from independent claim 1, and are therefore allowable based on their dependence from claim 1, which is believed to be allowable.

At page 3 of the Office Action, the Examiner asserts that the unexpected results cited by Applicants in the Response filed September 2, 2010, "were dependent upon the re-introduction of a native restorer gene back into the plant species from which it was isolated" and that the claims are not so limited. At page 5, the Examiner further alleges that the observed unexpected

results achieved by the claimed invention were “dependent upon the use of the rice restorer gene for the BT cytoplasm in rice,” but that the claims were not so limited.

As amended, claim 9 is directed to a plant of fertility restoring line containing a gametic fertility restorer gene homozygously at two or more loci, wherein the plant is rice and the gametic fertility restorer gene is the rice restorer gene for BT-type male sterility. Thus, without conceding the appropriateness of the Examiner’s rejection claim 9 now recites use of the rice restorer gene for the BT cytoplasm in rice (previously recited in claim 5), as pointed out by the Examiner.

Further, as detailed in the Response filed September 2, 2010, it was very difficult to obtain this fertility restoring line with multiple copies of the gene homozygous at multiple loci. The fertility restorer line according to Claim 9 is illustrated in Figure 10 of the specification. One of ordinary skill in the art would recognize from Figure 10 that the fertility restorer line is used in obtaining the hybrid plant of the present invention.

In view of the discussion above, Applicants respectfully request that the rejection of claims 1-3 and 7-10 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

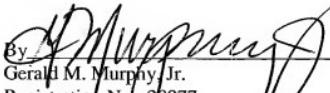
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Stephanie A. Wardwell, PhD, Registration No. 48,025, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: FEB 22 2011

Respectfully submitted,

By 
Gerald M. Murphy Jr.
Registration No.: 28977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000